IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6856 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANESH CHIMANLAL JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6856 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 26.05.2004 passed by the Police Commissioner, Vadodara City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in two different offence punishable under Sections 66B, 65AE, 81, of the Bombay Prohibition Act, both registered at Makarpura Police Station. The first offence being Makarpura Police Station III CR No. 264/2004 was registered on 08.04.2004 and second offence being Makarpura Police Station III CR No. 293/2004 was registered on 13.04.2003. The detaining authority has also considered the statements recorded by the sponsoring authority and placed before it along with the proposal dated 23.05.2004. Those statements were recorded on 21.05.2004 by the sponsoring authority and the same were verified by the detaining authority on 25.05.2004. No reasonable explanation is coming forward as to why sponsoring authority has not initiated preventive action after 13.04.2004.

3. One important submission made by ld. counsel Mr. Prajapati for the petitioner is based on the settled legal position. It has been submitted that the statements of the witnesses recorded by the sponsoring authority came to be verified by the detaining authority on 25.05.2004 and the order of detention is passed immediately on 26.05.2004. Mr. Prajapati has also stated that the petitioner detenu was released on bail on 26.05.2004 and so technically, there was no scope for the sponsoring authority to place the papers for obtaining detention order any time prior to 26.05.2004. Thus, the process is taken up mechanically. Thus, the order of detention is passed in hot haste which has resulted into non-application of mind and mechanical exercise of powers.Since the order of detention is passed under undue haste, the ratio of the ratio of the decision of this Court in the case of Ranubhai Bharwad (Vekaria) v/s State of Gujarat & Ors., 2000(3) GLR 2696 would help the petitioner. It is not necessary to reproduce relevant para-9 of the said decision, but in the facts and circumstances of the case, I am of the opinion that the ratio of the above-cited decision would squarely cover the case of the present petitioner and hence petition

requires to be allowed. So, on both the grounds, impugned order of detention requires to be quashed and set aside.

4. Affidavit-in-reply tendered today which is taken on record, also would not help the other side in view of the settled legal position.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 26.05.2004 passed by the Police Commissioner, Vadodara City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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